

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

**RECEIVED**  
JAN 20 2010

JEAN REEVES and DOROTHY KRONE )  
on behalf of themselves )  
and all those similarly situated, )

Plaintiffs, )

vs. )

BILL HOGAN, in his official capacity as )  
Commissioner for the Department of Health )  
& Social Services, and ROD MOLINE, )  
as Acting Commissioner of the Department, )  
in his official capacity as Director of the )  
Division of Senior and Disabilities Services )

Defendants. )

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
3<sup>RD</sup> JUDICIAL DISTRICT  
ANCHORAGE ALASKA

Case No. 3AN-08-9298 CI

**CLASS ACTION SETTLEMENT AGREEMENT AND ORDER**

The plaintiffs, Jean Reeves and Dorothy Krone, on behalf of themselves and all others similarly situated (hereinafter collectively referred to as "plaintiffs") filed a class action against the State of Alaska, Department of Health & Social Services, Division of Senior and Disabilities Services (hereinafter collectively referred to as the "state" or "defendants") on July 28, 2008, and an amended class action complaint on August 29, 2008.

The plaintiffs brought their class action lawsuit on behalf of all Alaskan Medicaid recipients who need certain Medicaid services and who have applied for

certain Medicaid services and/but whose requests or applications or amendments are allegedly not being acted upon by the state with reasonable promptness.

The plaintiffs sought declaratory and injunctive relief against the state regarding these alleged delays.

The plaintiffs alleged that by failing to process said Medicaid applications and/or amendment requests promptly, the state was violating the Medicaid Act, 42 USC §1396a(a)(8).

The plaintiffs sought to vindicate the aforementioned rights under 42 U.S.C. §1983.

Without admitting the plaintiffs' contentions, the state has agreed to adopt timelines for processing applications and amendment requests for Medicaid Waiver and PCA applicants and recipients.

The parties now wish to resolve their dispute.

There are no further legal issues which the parties need to resolve; the plaintiffs, by and through counsel of record, James J. Davis, Jr., Goriune Dudukgian, and Ryan Fortson of the Northern Justice Project and defendants, by and through counsel, Chief Assistant Attorney General Stacie L. Kraly, hereby agree to the settlement of all of the claims raised in the above-captioned matter on the following terms and conditions:

**I. REASONABLE PROMPTNESS**

The parties agree that the following timelines for processing PCA and Waiver applications are reasonable and meet the requirements of state and federal law:

**A. INITIAL PCA OR WAIVER APPLICATIONS**

**1. Complete Applications:**

After receipt of a complete application, the state will assign the assessment and will fully process complete PCA and/or Waiver applications, including conducting the assessment and issuing a notice of the state's decision within 30 business days. However, the timelines stated in this paragraph may be expanded for good cause when it is impossible to complete the scheduled assessment due to acts of god such as inclement weather or other situations that limit travel (e.g., volcanoes) that would put any employee or recipient in danger. In those events, scheduling must occur as soon practicable when restrictions to travel no longer exist and it is safe to travel.

**2. Incomplete Applications:**

If the PCA or Waiver application is determined to be incomplete, the administrative clerk will inform the PCA agency, care coordinator and applicant within 14 business days after a PCA provider or applicant has submitted the application materials on behalf of the applicant. If the missing information or documents are not provided within 15 business days of the date the notice is sent to the consumer or care coordinator, the consumer's file may be closed and a closure notice may be sent. Once the information necessary to complete an application is received, the application will be processed according to the appropriate timeline.

**3. Cognitive Incapacity (PCA only):**

If the state believes that the potential recipient of PCA or Wavier services does not have the cognitive capacity to manage consumer-directed PCA services and



therefore requires someone to help manage said services, the state will make said determination and provide written notice of said determination within 30 business days from the receipt of the completed assessment by the state.

**4. Expedited Applications:**

The state will process and issue a notice of its decision for expedited PCA and/or Waiver applications that meet the identified expedited criteria (*see* Section VI C, below) within 10 business days from the receipt of the application by the state,

**B. AMENDMENTS TO EXISTING SERVICES**

The state agrees that individuals who are already receiving PCA or Waiver services have the right to move to amend their service plans and plans of care to seek additional services if needed. The state has developed a new form to be used for individuals who seek such amendments (see attached Exhibit A). The state agrees to process and notify the client within 10 business days for expedited amendments requests and within 30 business days for non-expedited amendment requests from the date of receipt of the amendment request.

**C. REASSESSMENTS**

The state agrees to conduct all re-assessments under the PCA and/or Wavier program and provide notice of the decision within 30 business days of the date for the annual review.

#### **D. PLANS OF CARE**

The state agrees to process both initial and renewal Plans of Care for Waiver services and provide notice of the decision within 30 business days after a complete plan is received from the care coordinator.

#### **II. NOTICE**

The parties agree that any notice required under the Section I of this agreement shall be processed as follows:

1. to the consumer and/or power of attorney/guardian, notice shall be sent via certified mail/return receipt requested.
2. to the care coordinator (if any), agency or agencies providing services or anyone else receiving a courtesy copy of the notice, notice shall be sent by regular mail or email if email has been approved by the care coordinator and proper encryption safeguards are in place to protect private health information.

#### **III. IMPLEMENTATION**

The state shall endeavor to implement and adopt the timelines listed above in policy and procedure, as soon as practicable. The state further agrees that it shall meet and/or exceeded the deadlines in this agreement within six months of the date of this agreement. If the state fails to meet the timeframes outlined in this agreement, the plaintiffs may seek to re-open this litigation.

#### **IV. PROGRAM CHANGES**

This agreement is entered into under regulations and processes that exist based upon the April 1, 2006 effective date of the personal care regulations and policies and procedures adopted thereafter. Nothing in this agreement precludes the state from

amending or changing the personal care or waiver services via regulation so long as those changes are made in pursuant to the Alaska Administrative Code. Nothing in this agreement precludes counsel for plaintiffs from challenging any future regulatory changes.

## **V. COSTS AND FEES**

The state agrees that plaintiffs are the prevailing parties in this case. Plaintiffs' shall have 45 days from the execution of this settlement agreement to file their motion for attorneys' fees and costs. Plaintiffs may move for an enhanced fee award, and the state may oppose that motion.

## **VI. DEFINITIONS**

A. **"Complete Application"** means that the applicant, the care coordinator or legal representative has submitted to the state the following documents:

1. the demographic form;
2. the client rights form;
3. HIPAA form;
4. consumer direct legal rep agreement; and
5. a medical diagnosis verification form.<sup>1</sup>

B. **"Incomplete Application"** means any application that does not contain all documentation listed in paragraph 9a.

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<sup>1</sup> The state notes that under current practice, medical certification forms for the Waiver program are obtained by the state. The state expressly reserves the right to amend this practice by regulation so that consumers and/or care coordinators are responsible for obtaining the medical certification form. Until such time, however, the medical certification forms will be obtained by the state.



**Northern Justice Project**

A Private Civil Rights Firm  
310 K Street, Suite 200  
Anchorage, AK 99501

Phone: (907) 264-6634 • Fax: (866) 813-8645

C. “Expedited Criteria” means a consumer shows that they are suffering from:

1. a terminal diagnosis;
2. death of the applicant’s primary caregiver within the previous 90 days;
3. current emergency absence of the primary caregiver due to either hospitalization or medical/family emergency travel;
4. anticipated discharge from an acute care facility within seven days (this does not apply to PCA recipients);
5. Adult Protective Services referral; or
6. Office of Children’s Services (child protective services) referral.

D. “Business Days” shall not include any Saturday, Sunday, or legal holiday.

DATED: 1/14/10

DANIEL S. SULLIVAN  
ATTORNEY GENERAL

By:

Stacie L. Kraly  
Stacie L. Kraly  
Assistant Attorney General  
Alaska Bar No. 9406040  
Counsel for Defendants

**Northern Justice Project**

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310 K Street, Suite 200  
Anchorage, AK 99501

Phone: (907) 264-6634 • Fax: (866) 813-8645

DATED: Jan. 14, 2016

NORTHERN JUSTICE PROJECT

By:

Ryan Fortson  
James J. Davis, Jr., AK Bar No. 9412140  
Goriune Dudukgian, AK Bar No. 0506051  
Ryan Fortson, AK Bar 0211043  
Counsel for Plaintiffs

IT IS SO ORDERED.

Date: Jan 17/10

Sen K. Tan  
SEN K. TAN  
SUPERIOR COURT JUDGE

I Certify that on 1.19.10  
a copy of the above was mailed/delivered  
to each of the following at their addresses  
of record:

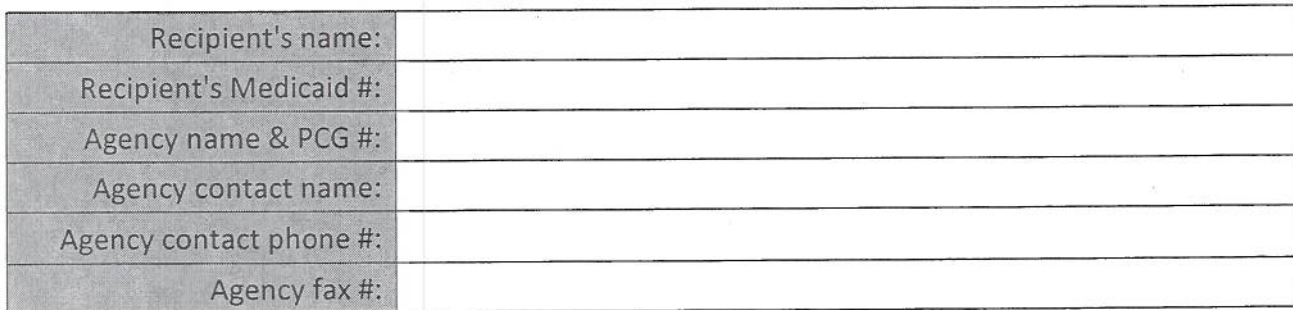
M. Lucas  
Secretary/Deputy Clerk

R. Fortson

S. Krazy-Ago



Department of Health and Social Services  
Division of Senior and Disabilities Services  
PCA Program – Service Plan Amendment



Does this involve changes to 'Plan B'?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
<p>Amendment requests are submitted when there is a <b>change</b> in the recipient's condition. Please explain what changes have occurred in the recipient's condition that requires either an addition or reduction of services. All increases in service(s) must include documentation from a qualified medical professional, as defined in 7 AAC 43.795, that documents changes in the recipient's condition or documentation regarding the recipient's changes in living condition or supports.</p> <p>Please explain your answers in the box below and attach and list all documentation to support this request. Submit additional page(s) as needed.</p>			
<div style="border: 1px solid black; height: 150px;"></div>			

What are the dates of the Service Plan you are requesting to be changed?	Begin date	End date
Is this a temporary request to amend your Service Plan?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If you checked 'yes', what are the dates of the timeframe?	Begin date	End date

## INSTRUCTIONS:

Please enter the information in the unshaded areas below.

- "BEFORE" means the time currently authorized in the Service Plan.
- "AFTER" means the amount of time you are requesting for the service including what you current have PLUS the change you are requesting.

SERVICE/ACTIVITY Note: amount of time or service/activity may be limited due to regulatory restrictions		# of times per day	Amount per time in minutes	Number of days per week
<b>BODY MOBILITY</b> Positioning	BEFORE			
	AFTER			
<b>BODY MOBILITY</b> ROM - (RX)	BEFORE			
	AFTER			
<b>TRANSFER</b>	BEFORE			
	AFTER			
<b>LOCOMOTION WALKING</b> Exercise (RX)	BEFORE			
	AFTER			
<b>LOCOMOTION WALKING</b> In-room	BEFORE			
	AFTER			
<b>LOCOMOTION WALKING</b> In multi-level	BEFORE			
	AFTER			
<b>LOCOMOTION WALKING</b> Outside to medical appointments	BEFORE			
	AFTER			
<b>DRESSING &amp; UNDRESSING</b>	BEFORE			
	AFTER			
<b>EATING</b>	BEFORE			
	AFTER			
<b>MEDS, VITALS, DIABETIC TESTING</b> Tube/IV drip	BEFORE			
	AFTER			
<b>MEDS, VITALS, DIABETIC TESTING</b> Oral/topical, vitals/diabetic	BEFORE			
	AFTER			
<b>BATHING</b>	BEFORE			
	AFTER			



<b>SERVICE/ACTIVITY</b> Note: amount of time or service/activity may be limited due to regulatory restrictions		# of times per day	Amount per time in minutes	Number of days per week
<b>BANDAGES/DRESSING</b> Non-sterile, oxygen use	BEFORE			
	AFTER			
<b>BANDAGES/DRESSING</b> Sterile dressing foot care (RX)	BEFORE			
	AFTER			
<b>BANDAGES/DRESSING</b> Equipment maintenance	BEFORE			
	AFTER			
<b>TOILET USE</b>	BEFORE			
	AFTER			
<b>PERSONAL HYGIENE/GROOMING</b> Personal hygiene	BEFORE			
	AFTER			
<b>PERSONAL HYGIENE/GROOMING</b> Separate shampoo	BEFORE			
	AFTER			
<b>LIGHT MEAL - LUNCH</b>	BEFORE			
	AFTER			
<b>SERVICE NOTES DOCUMENTATION</b>	BEFORE			
	AFTER			
<b>MAIN MEAL</b>	BEFORE			
	AFTER			
<b>SHOPPING</b>	BEFORE			
	AFTER			
<b>LIGHT HOUSEWORK</b>	BEFORE			
	AFTER			
<b>LAUNDRY</b>	BEFORE			
	AFTER			
<b>ESCORT</b>	BEFORE			
	AFTER			



Please read the following statements and initial each to indicate you have read and understand each statement:

☐ I have participated in the planning of my own care and agree with the above Service Plan amendment.

☐ I agree to the release of any documentation requested by SDS or its agents including the PCA agency to support this request.

Recipient signature: \_\_\_\_\_ Date: \_\_\_\_\_

Legal representative: \_\_\_\_\_ Date: \_\_\_\_\_

☐ Documentation of status as legal representative is attached, or was submitted to SDS at an earlier date.

Witness signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness printed name: \_\_\_\_\_ Date: \_\_\_\_\_

Witness relationship to client: \_\_\_\_\_

*Witness is required if recipient signs with an "X". Witness may not be Care Coordinator, PCA or PCA agency representative.*

Agency representative signature: \_\_\_\_\_ Date: \_\_\_\_\_

#### SDS USE ONLY

Time is to be reduced according to other tasks caregivers or the recipient can perform and to whatever extent the recipient's habits make the time amount larger than actually needed. Inefficiency of an assistant is not justification for exceeding these guidelines.

Decision:	Action:	Total approved hours: _____
<input type="checkbox"/> Approved	<input type="checkbox"/> Letter will be sent out	Effective start date: _____
<input type="checkbox"/> Approved with changes	<input type="checkbox"/> Fax to agency	Effective end date: _____
<input type="checkbox"/> Denied	<input type="checkbox"/> Reassessment will be requested	Time limited return
<input type="checkbox"/> Incomplete	<input type="checkbox"/> Other _____	to _____ hours starting: _____
		PA entered: _____ Initials: _____

SDS signature \_\_\_\_\_ Date: \_\_\_\_\_